Supreme Court, U.S.
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91-2023

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

OLA ALLEN, PH.D., PETITIONER

VS.

E. C. SHRUM, ETAL, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OLA ALLEN, Ph.D.
PRO SE
P. O. BOX 6706
LONGVIEW, TX 75608

35

Questions Presented:

1. The U.S. 5th Circuit, U.S. District Court, District Court and Municipal Court refused to uphold the U.S. Constitution re Hud's findings of 7-29-82, 8-16-82, Hunter, M.D.G.P., Liu, M.D. Orthopaedic Surgeon, Risner, D.C., Longview Regional Hospital - Sports Medical-Physical Therapy, A-Tech Medical - Supplies for the Tens Units, Drug Emporium Pharmacy, K & B Pharmacy, Witnesses of Watsoever Nature, Certifications of Petitioner, Suppliers and witnesses...Why did the U.S. 5th Circuit not allow all of this information with Strict Proof thereof as a Matter of Constitutional Law?
2. What are Hud's findings of 7-29-82

and 8-16-82, Hunter, M.D.G.P., Liu, M.D. Orthopaedic Surgeon and ETAL named above herein and the records?

3. Judges Reavley, Gee, Randall, Tate, Clark, Poltiz, King, Garza, Jolly, Davis, Smith, Steger, Parker, Guthrie, Khoury, Vascoeu and Dunn departed from the accepted and usual course of Judicial Proceedings and calls for this court's power of constitutional supervision re Ola Allen, PH.D. Petitioner Pro Se Civil rights violations, because of my race, color, sex, PH.D. Pro Se, submitted the truth and nothing but the truth with Strict Proof thereof and I am right as a Matter of Constitutional Law...Why did all of these prejudice and bias judges further racism, rape, slander,

defamation to my character, ETC. upon and against me; instead of upholding the U.S. Constitution?

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1. E.G. (P1.EX. 14; R., 199, 2134) and all pages of Whatsoever Nature in the records...

2. E.G. (J.A. 12), (R.12) and all pages of Whatsoever Nature in the records...

Respondents Continue As Follows:

Super One Foods, Kathy R. Ogle, Sidney W. Clyburn, D/B/A Heritage Homes, Longview Savings and Loan Association AKA American Federal Bank, F.S.B., Lawyers Title Agency - Jack Findley Owner AKA Professional Title Land Services - Elizabeth Foulton, James G. and Carol T. Heller, Union Modern Mortgage Corporation, LPD - City of Longview, Charles A. and Jean C. Reeves, Gregg Abstract Company, Longview Savings and Loan Association AKA, American Federal Bank, F.S.B., again, Fleetwoood Insurance, Aetna Insurance, Risner, D.C. and City of Longview again...

Below is a list of all parties to this proceeding whose judgments is to be reviewed as follows:

1. Petitioner, Hunter, M.D.G.P., Liu, M.D. Orthopaedic Surgeon, Risner, D.C., Browne, M.D., Holman, M.D., all suppliers, and witnesses, Justice Kennedy, Judges Justice, Reavley, Clark, Parker, Steger, Guthrie, Court of Appeals - Texarkana, Texas, Starr, J.P. Court, Welge, Court of Criminal appeals of the State of Texas, Khoury, Vascoeu, Dunn, Gee, Randall, Tate, Poltiz, King, Garza, Jolly, Davis, Smith, Hud, each Respondent, each attorney and ETAL in each Civil Rights Complaint with Strict Proof thereof, of Whatsoever Nature, all pages, issues of racism, rape, ETC. as a Matter of Constitutional Law beyond

a shadow of a doubt - so help me God...

TABLE OF CONTENTS

1. Questions Presented -- pages i-iii...

2. Respondents continue - pages iii...

3. A list of all parties - pages 5-6...

4. A Table of Authorities - pages iiiiiii...

5. A reference to the official and unofficial reports delivered in the case by other courts and administrative agencies - pages 15-16...

6. A concise statement of the grounds on which the jurisdiction of this court is invoked...pages 31-32...

7. The date of the entry of the judgment, ETC. to be reviewed - pages 16-17...

8. The date of any order respecting a rehearing, ETC. - page 17...

9. Express reliance upon Rule 12.3 - page 17...

10. Statutory provisions believed to confer on this court's jurisdiction to review the judgments, ETC. in question by Writ of Certiorari - pages 18-31...

11. Constitutional provisions, treaties, statutes, ordiances, regulations, ETC. - page 18-31...

12. A concise statement of the cases containing the facts material to the consideration of the questions presented - pages 31-32...

13. A review of these Judgments of the U.S. Courts - pages 32-33...

14. A direct and concise argument amplifying the reasons relied on for allowance of the Writ - pages 33-34...

15. All documents, witnesses, Petitioner, certifications, Respondents, attorneys, various judges and ETAL and pages of Whatsoever Nature in 6:91CV42-91-4591, 6:82-49-CA-83-2059, 6:90-321-CA-91-4668 and 6:91CV151-91-4840 - pages i-106a...

16. Appendix - pages 1a-106a...

TABLE OF AUTHORITIES

1. Ola Allen, PH.D. Petitioner, Pro Se Civil Right Complaints with Strict Proof thereof - pages i-106a...

2. Longview News 6-4-91 re Justice Kennedy's statement re court bans racial bias in Civil Juries, ETC. - pages i-106a...

3. Rule 4 - Summons and returns, ETC. - pages i-106a...

4. All Civil Rights Complaints, all

documents, exhibits of whatsoever Nature, Rule 4, - Petitioner refuses to go before Judges Reavley, Clark, Steger, Parker, Guthrie, Gee, Randall, Tate, Poltiz, King, Garza, Jolly, Davis, Smith, Khoury, Vascoeu, Dunn - now and in the future - pages i-106a...

5. Medical Narratives Certifications, ETC. --- pages i-106a...

6. Medical Expenses and Certifications, ETC. - pages i-106a...

7. All Witnesses and Certifications, ETC. - pages i-106a...

8. All dockets. Dockets - 89-537-B, 89-1833-B and 90-541-A dates decisions rendered 8-24-90 and 10-10-90 - pages i-106a...

9. Dockets 6:90-321--CA-91-4668 page 2, Nos. 5 and 11 - 9-10-90 and 10-9-90

and 6:91CV42-91-4591 - dates filed - pages i-106a...

10. Companion Cases - 6:82-49-CA-83-2059, 6:90-321-CA-91-4668, 6:91CV151-91-4840 Hud's Final Investigation Reports of 7-29-82 and 8-16-82 - pages i-106a...

11. U.S. District Court Local Rule 4 ---- pages i-106a...

12. U.S. District Court Civil Cover Sheet Laws - pages i-106a...

13. U.S. District Court Local Rule 6 ---------- pages i-106a...

14. U.S. District Court Local Rule 8 --- pages i-106a...

15. Letter to Risner, D.C. from his attorney and a copy to me of 6-21-91 - pages i-106a...

16. No Ad Testificandum - Ulmer v. Chancellor - 691 F.2E pages 209,

212-213 (1982) Federal Courts #932 - pages i-106a...

17. J.P. Judgments - Precinct 2 of 12 - 5-89 - pages i-106a...

18. Certificates of interested persons in 6:90-321-CA-91-4668 - 6:91CV151-91-4840 - pages i-106a..

19. Texas Board of Chiropractic Examiner Letter of 5-29-90 - pages i-106a...

20. District Court Certification in 90-541-A - pages i-106a...

21. #31.004 Effect of Adjudication in Lower Trial Court. Vernon's Annotated Civil Practice and Remedies Code: -- pages i-106a...

22. Various Judges, judgments, orders, opinions, ETC. of whatsoever Nature - pages i-106a...

23. 28 U.S.C. #144 and #455 - pages i-106a...

24. FRCIVP 12 (A) and 6 (A) ---------- pages i-106a...

25. Judicial Conduct and Disability Act of 1980 - pages i-106a...

26. Doctor-patient relationship, ETC. ---- pages i-106a...

27. Respondents response with No Strict Proof thereof - pages i-106a...

28. Ulmer V. Chancellor - 691F.2E pages 209, 212-213 - Federal Courts #932, 13.12(6), 794, 13.15, 13.15, 23, 13.15, 23 13.15, ETC. pages i-106a...

29. Cities, Towns and Villages, ART, 1200 HH Sections 10-11 - pages i-106a...

30. U.S. Constitutional Amendments - 1, 5, 7, 8, 9, 10, 11, 13, 14, 15, 19, ETC. - pages i-106a...

31. All pages of all documents of Whatsoever Nature in the records - pages i-106a...

iiiiiiiiiiii

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1. E.G. (P1.EX. 14; R., 199, 2134) and all pages of Whatsoever Nature in the records...

2. E.G. (J.A. 12), (R.12) and all pages of Whatsoever Nature in the records...

Reference To The Official and Unofficial Reports of Opinions Delivered In These Civil Actions By Another Court and Administrative Agency As Follows:

1. U.S. 5th Circuit, U.S. District Court, District Courts, Municipal Court, Texas State Appellate Court and Texas State Courts of Criminal Appeals.
2. J.P. Court Precinct 2 Judgments of 12-5-89 in 6:91CV42-91-4591 and 6:91CV151-91-4840.
3. Texas Board of Chiropractic Examiners Letter of 5-29-90 in 6:91CV151-91-4840.
4. Hud's Final Investigation Reports of 7-29-82 and 8-16-82 in 5:82-49-CA-83-2059.
5. There are no unofficial reports and opinions delivered by another court or administrative agency in the

above named Civil Actions of Whatsoever Nature.

Statement Of The Grounds On Which The Jurisdiction Of This Court Is Invoked As Follows:

1. Ola Allen, PH.D. Petitioners Pro Se Petitions this court for Writ of Certiorari based on my Civil Rights violations from 1979 to the Present, because of my race, color and sex, PH.D. Pro Se and the truth and nothing but the truth with Strict Proof thereof, unable to obtain justice in the lower courts, in the interests of justice and as a Matter of Constitutional Law, ETC. judgments and opinions from J.P. Court of 12-5-89, Texas Board of Chiropractic Examiners Letter of 5-29-90, U.S. District Court judgments, U.S. 5th Circuit,

Judgments, Judges Khoury, Vascoeu and Dunn judgments...Calls for this Court's Exercise Power of Supervision is greatly needed in the name of God, interests of Justice, and Constitutional Law, as the lower courts departed from the accepted and usual course of Judicial Proceedings, beyond a shadow of a doubt - so help me God with No Strict Proof thereof as a Matter of Constitutional Law so help me God...

2. There is no date of any order respecting a rehearing, extension of time within which to file Petition for Writ of Certiorari at this time...

3. Express reliance upon Rule 12.3 does not apply to the Petitioner at this time in the above named Civil Actions...

4. The statutory provisions as a Matter of Constitutional Law to confer on this Court's Jurisdiction to review the Judgments, orders and opinions of whatsoever Nature re the many violations re my Civil Rights that are Constitutional Questions by Writ of Certiorari from 1979 to the present as follows:

1. Companion Cases - 6:82-49-CA-83-2059, 6:90-321-CA-91-4668, 6:91CV151-91-4840 and Hud's Final Investigation Reports of 7-29-82 and 8-16-82...No jury trial on the merits and all issues re racism, rape, ETC...
2. Constitutional Amendments #1, #5, #7, #8, #9, #10, #11, #13, #14, #15, #19, ETC...
3. Local Rule 4 - The Law on Said Summons, Complaints and Returns

and all documents of whatsoever

Nature and ETAL...

5. U.S. District Court Civil Cover Sheet Laws for filing and submitting lawsuits under these laws taken from U.S. Constitution - #110, #190, #360, #362, and #440, ETC.
   1. #110 - Insurance...
   2. #190 - Other Contract...
   3. #360 - Other Personal Injury...
   4. #362 - Personal Injury - Medical Malpractice...
   5. #440 - Other Civil Rights...

Rule 4 - Law on Said Summons states:

14. "An answer to the complaint which, is here with served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, Judgment By Default will be taken against you for the relief demanded in the complaint" ...No exceptions...

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1. E.G. (P1, EX. 14. R; 199, 2134) and all pages in the records of Whatsoever Nature...

2. E.G. (J.A. 12),. (R. 12) and all pages of Whatsoever Nature...

15. FRCIVP 12 Defenses and Objections - when and how presented - by pleading or motion - motion for Judgment on the Pleadings (A) when presented. A Defendant shall serve an answer within 20 days after the service of the summons and complaint upon the Defendant, except when service is made under Rule 4 (E) and a different time is prescribed in the order of Court under the statute of the U.S. or in the statute or rule of court of the state, ETC. The service of a motion permitted under this rule alters these periods of time as the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court, ETC.

16. Rule 6 Time (A) computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, or event, or default from which the designated period of time begins to run shall not be included, ETC.

17. #31.004 - Effect of Adjudication In Lower Trial Court, Vernon's Annotated Civil

Practice and Remedies Code:
"(E) A judgment or a determination of facts or law in a proceeding in a lower trial court is not res judicata and is not a basis for estoppel by judgment in a proceeding in a district court."...

18. Law on Recusal and Disqualification - 28 U.S.C. #144 and #455 - requires a ruling by the judge as follows:
#144. Bias or prejudice of Judge.
"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made

in good faith." #455. Disqualification of Justice, Judge or Magistrate.
(a) Any justice, judge or Magistrate of the U.S. shall disqualify himself in any proceeding in which his impartially might reasonable be questioned.
(b) He shall also disqualify himself in the following circumstances:

1. Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary, and facts concerning the proceeding;
2. Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it, ETC...
3. Ulmer v. Chancellor 691 F.2E - pages 209 - 212-213 (1982)
   2. Civil Rights #13.12(6) Pro Se Civil Rights Suit brought by former county jail prisoner, alleging that unsanitary conditions and inadequate facilities at jail deprived him of his federal constitutional rights, did not appear to be frivolous in so far as

it sought damages. 42 U.S.C.A. #1983...

5. Civil Rights #13.15 Civil Rights Complaint has no right to automatic appointment of counsel - I made application and I was refused...

6. Civil Rights #13.15 Trial Court is not required to appoint counsel for indigent Plaintiff asserting claim under federal statute governing civil action for deprivation of rights unless case presents exceptional circumstances. 42 U.S.C.A. #1983.

10. Civil Rights #13.15 Federal District Court in determining whether to appoint counsel for former county jail prisoner in his Pro Se Civil Rights Suit for alleged deprivation of his Federal Constitutional Rights by unsanitary conditions and inadequate facilities at jail should consider whether appointment of counsel would be service to him and perhaps, court and defendant as well, by sharpening issues in case, shaping examination of witnesses and thus shortening trial and

assisting in just determination. 28 U.S.C.A. #1915(D); 42 U.S.C.A. #1983.

11. Judicial Conduct and Disability Act of 1980 - Title 28 - Judiciary and Judicial Procedure #372. Retirement for Disability; Substitute Judge on failure to retire, judicial discipline. (A) Any Justice or Judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a Successor.

Any Justice or Judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an Associate Justice of the Supreme Court, a Chief Judge of a Circuit or the Chief Judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a Certificate of disability signed by the Chief Justice of the United States.

A Circuit or District Judge, desiring to

retire u... this section, shall furnish to the Pr sident a Certificate of Disability signed by the Chief Judge of his Circuit...

12. Cities, Towns and Villages - ART 1200 HH Section 10-11 - Page 151 - Motion for A New Trial and Notice of Appeal:
"In order to perfect an appeal, a written motion for new trial must be filed by the Defendant no later than the 10th day rendition of the judgment of conviction, and may he amended by leave of court at anytime before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion, ETC." Section 11 - "The notice of appeal shall be in writing and filed with the Municipal Court no later than the 10th day after the motion for new trial is overruled, ETC. This was and is not done by Judge Dunn so help me God...

4. FRC1VP 59 - Motion for a new trial:

1. "A request that the judge set aside the judgment and order a new trial on the basis that the trial was improper or unfair due to specified prejudicial errors that occurred.
2. Motion in Limine:
"A written motion which is

usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements. Robinson v. State Ind. App., 309 N.E. 2D 833, 854. Purpose of such motion is to avoid injection into trial of matters which are irrelevant, in admissible and prejudicial and granting of motion cannot be error. Redding v. Ferguson, Texas. Civ. App., 501 S.W. 2D 717.724.

5. Texas Rule 168 - Part 2:

1. "Denial of motion for discovery and production of documents and sustaining objections to certain interrogatories submitted was not shown to be prejudicial to defendants who did not show that trial court had fact issues to determine or show purpose for which information was sought. Rankin v. Kellam, Civ. App. 1965, 388 S.W. 2D 306, ref. N.R.E."

2. Texas Rule 169 - Part 2:

"Where defendants failed to answer request for admission of fact by Plaintiff, court of civil appeals treated such fact as admitted and held evidence to contrary without effect - Weaver v. Weaver, Civ. App. 1943, 171 S.W. 2D 898 ref. W.M."

Preamble

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic

tranquility, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The Ten Original Amendments also called Bill of Rights. They were declared enforce 12-15-1791...

Article 1

"Religious Establishment Prohibited, Freedom of Speech, of the Press, and Right to Petition. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the Freedom of Speech or of the Press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Article 5

"Provision concerning prosecution, Trial and Punishment private property not to be taken for public use, without just compensation. No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in case arising in the Land or Naval Forces, or in the Militia, when in Actual Service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he compelled in any criminal case to be a witness against himself, nor deprived of life,

liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Article 7

"Right of Trial By Jury in suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of Trial By Jury shall be preserved, and no fact tried By a Jury shall be otherwise re-examined in any court of the United States than according to the rules of the Common Law."

Article 8

"Excessive Bail or Fines and Cruel Punishment Prohibited - Excessive bail shall not be required, nor excessive fives imposed, nor cruel and unusual punishments inflicted."

Article 9

"Rule of Construction Of Constitution - The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Article 10

"Rights of States Under Constitution - The powers not delegated to the United States, are reserved to the state respectively, or to the people."

Article 13

"Slavery Abolished - The following

Amendment was proposed to the Legislatures of the several states by the Thirty-Eighth Congress on the 1st of February, 1865, and was declared to have been ratified in a proclamation by the Secretary of State dated 12-18-1865. It was rejected by Delaware and Kentucky: was conditionally ratified by Alabama and Mississippi; and Texas took no Action."

1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction:

2. Congress shall have power to enforce this Article by appropriate legislation."

Article 14

"Citizenship Rights Not To Be Abridged - The following popularly known as the Reconstruction Amendment, was proposed to the Legislatures of the several States by the Thirty-Ninth Congress on the 16th of June, 1866, and was declared to have been ratified in a proclamation by the Secretary of State, dated 7-23-1868. The Amendment got the support of 23 Northern States. It was rejected by Delaware, Kentucky, Maryland, and 10 Southern States. California took no action. Subsequently it was ratified by the 10 Southern States."

1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without Due Process of the Law, nor deny to any person within its jurisdiction the Equal Protection of the Law."

Article 15

"Equal Rights for white and colored citizens. The following Amendment was proposed to the Legislature of the several state by the Fortieth Congress on the 27th of February, 1869, and was declared to have been ratified in a proclamation by the Secretary of State, dated March 30, 1870. It was not acted on by Tennessee: it was rejected by California, Delaware, Kentucky, Maryland, and Oregon; ratified by the remaining 30 states. New York rescinded its ratification January 5, 1870. New Jersey rejected it in 1870, but ratified it in 1871.

1. The Right of the Citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude, (2) The Congress shall power to enforce the provisions of this Article by appropriate legislation."

Article 19

"Giving Nation-wide Suffrage to Women - The following Amendment was proposed in the Legislatures of the several states by the Sixty-fifth Congress, having been adopted by the House of Representatives, May 21, 1919, and by the Senate June 4, 1919. On August 26, 1920, the United States Secretary of State proclaimed it in effect, having been adopted (June 10,1919 - August 18,1920) by three-quarters of the state. The Tennessee House, August 31, rescinded its ratification, 47 to 24.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.
2. Congress shall have power by appropriate legislation, to enforce the provisions of this Article."

13. Concise statement re my Civil Rights Violations from 1979 to the present containing the factual material for consideration re the Constitutionality of Questions presented as follows:

Petitioner is denied Equal Protection and Due Process of Law by all of the above named parties, above, herein and the records beyond

a shadow of a doubt - so help me God with no strict proof thereof as a Matter of Constitutional Law...

13. A Review of These Judgments As Follows:

Some of these Judgments were and are rendered prior to filing my Civil Rights Complaints in the U.S. District Court -

1. Hud's Final Investigation Reports of 7-29-82 and 8-16-82, ETC...
2. U.S. District Court Orders of - 12-23-82, 1-10-83, 1-17-83, 5-2-91, 5-20-91, 12-20-90, 1-2-91, 7-18-91, 5-17-91, 5-24-91 and 6-17-91, ETC., U.S. 5th Circuit Orders of 9-1-83, 7-9-86 and 7-12-91, 7-11-86 - 2-3-81, and 5-18-81, ETC...
3. J.P. Court Order of - 12-5-89

and Texas Board of Chiropractic Examiners Letter of 5-29-90.

4. 124th District Court Orders of 8-24-90 - 89-537-B and 89-1833-B, now 6:91CV42-91-4591...

5. 188th District Court Orders of 5-21-90 and 10-10-90 in 90-541-A, now 6:91CV42-91-4591...

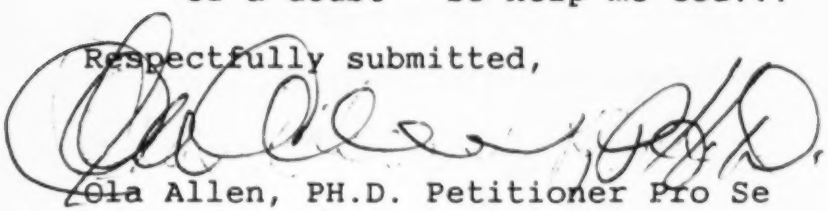
6. Municipal Court Order of 1-12-90 - Without my knowledge, Petitioner found out about 7 months later, ETC. now 6:90-321-CA - 91-4668...

7. Petitioner filed her appeals re my Civil Rights violations in these Civil Actions timely to the U.S. 5th Circuit and this court...

14. Direct and Concise Argument Amplifying the reasons relied on for allowance of the Writ as follows:

The U.S. District Court - Tyler Division and The U.S. 5th Circuit and ETAL departed from the accepted and usual course of Judicial Proceedings in their unofficial capacities and calls for an exercise of this court's power of supervision re my Civil Rights violations from 1979 to the present beyond a shadow of a doubt - so help me God...

Respectfully submitted,



~~Ola~~ Allen, PH.D. Petitioner Pro Se

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1. E.G. (P1. EX. 14. R; 199, 2134) and all pages in the records of Whatsoever Nature...

2. E.G. (J.A. 12), (R. 12) and all pages of Whatsoever Nature...

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PETITION FOR WRIT OF

CERTIORARI TO THE

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FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

APPENDIX 1

OLA ALLEN, Ph.D.
PRO SE
P. O. BOX 6706
LONGVIEW, TX 75608

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-4591
Summary Calendar

OLA ALLEN,

Plaintiff-Appellant,

VERSUS

E.C. SHRUM,
SUPER ONE SUPERMARKET,
and
KATHY R. OGLE,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Texas
(91 CV 42)

(February 13, 1992)

Before JOLLY, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:

Ola Allen appeals the dismissal of her civil rights action brought pursuant to 42 U.S.C. § 1983. Finding no error,

we dismiss the appeal as frivolous.

I.

Allen filed this action against E.C. Shrum, Super One Supermarket (Super One), and Kathy R. Ogle seeking $50 million dollars from each defendant for actual and punitive damages. She alleged that the defendants caused severe personal injuries to her in three separate accidents, that she had sued them in the Texas state courts, and that her suits had been dismissed improperly by the state court judges "because of her race, color, and sex."

The district court dismissed the case as barred by the Texas statute of limitations for section 1983 actions as to one claim and the principle of res judicata as to all three claims. The court found that Allen's claims against defendants had already been disposed of

by final Texas state court judgments. The court found that Allen's suit was frivolous and sanctioned her by ordering that she secure permission from the court before filing any new cases.

II.

A.

Super One argues that this appeal should be dismissed because Allen's notice of appeal did not comply with Fed. R. App. P. 3(c) in that it did not designate the judgment or order from which Allen intended to appeal. Rule 3(c) provides that the notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order or part appealed from; and shall name the court to which the appeal is taken. Allen's notice does name the parties and the court, but Super One is correct that it does not specifically

name the judgment or order. However, we construe this part of the rule broadly and will not dismiss an appeal if it is evident which judgment the appellant is appealing. Osterberger v. Relocation Realty Serv. Corp., 921 F.2d 72, 73-74 (5th Cir. 1990). It is plain from her brief that Allen intended to appeal the judgment dismissing her case, so the appeal should not be dismissed. See Cates v. International Tel. & Tel. Corp., 756 F. 2d 1161, 1173 n.18 (5th Cir. 1985).

B.

Although Allen's complaint does not specifically state that she is proceedingt under section 1983, if we give her pro se complaint a liberal construction, it can be interpreted as seeking relief under section 1983, as she claims discrimination on the basis of her

race, color, and sex. Allen's claim appears to be that she believes that her state tort actions against defendants were dismissed by the state court judges because she is black. She sued Shrum and Ogle for damages arising out of two car accidents, and she sued Super One for detaining her for shoplifting.

The suits against Shrum and Super One were dismissed with prejudice because Allen failed to comply with the defendants' discovery requests, and the suit against Ogle was dismissed on a motion for directed verdict at the close of Allen's case. Unhappy with the outcome of these cases, she is attempting to sue the defendants in federal court for damages arising out of the same incidents that were the subject of her state court suits.

"Litigants may not obtain review of

state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986); see also Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986). Allen attempted to phrase her complaint in the language of a civil rights suit by making allegations of a conspiracy between the defendants, their attorneys, and the state court judges to deprive her of her day in court and her right to just compensation for her injuries because she is black.

Although the named defendants are private and not state actors, private acts or conduct may give rise to liability under section 1983 if the individual is a willing participant in joint action with the state or its agents. Hale, 786 F.2d at 690. Allen's

complaint fails to allege any factual basis to support her conspiracy claims. In section 1983 cases, we require the plaintiff to state specific facts, not merely conclusory allegations. Id. Because Allen alleges no facts, her complaint does not state a section 1983 claim. Her suit is merely an attempt to obtain review of her state court actions, which is prohibited. The district court correctly dismissed this action.

C.

The district court found that Allen had violated Fed. R. Civ. P. 11 and sanctioned her by imposing a preclusion order against filing future lawsuits unless she receives permission of the court. The court noted that she had been sanctioned twice already in Actions TY-82-49-CA (no new motions without leave of court) and TY-90-321-CA ($100). Allen

argues that the district court could have sanctioned her, but should not have done so in this manner.

A district court's imposition of sanctions under rule 11 is reviewed for abuse of discretion. Thomas v. Capital Sec. Servs., 836 F.2d 866, 871-73 (5th Cir. 1988) (en banc). The district court did not abuse its discretion in sanctioning Allen. Allen's complaint was not well grounded in fact and was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. See id. at 870; rule 11.

The district court has discretion in determining what type of sanction to impose; however, the court should utilize the sanction that furthers the purpose of rule 11 and is the least severe sanction adequate to such purpose. Thomas, 836

F.2d at 878. We have approved the use of court orders prohibiting a plaintiff from filing new complaints without permission of the court. See Mayfield v. Klevenhagen, 941 F.2d 346, 347-49 (5th Cir. 1991); Farguson v. MBank Houston, N.A., 808 F.2d 358, 360 (5th Cir. 1986). The district court's order prohibiting Allen from filing any new complaints unless she first receives permission of the court was warranted. Previously imposed monetary sanctions evidently have been ineffective to curb Allen's penchant for filing baseless pleadings. She is a repeat frivolous litigator, and there is no hint of improper motive in the district court's order.

Super One has made a motion to this court for sanctions against Allen pursuant to Fed. R. App. P. 38. Super One seeks double costs and attorneys'

fees. Rule 38 authorizes this court to impose sanctions on an appellant who pursued a frivolous appeal. McAfee v. 5th Circuit Judges, 884 F.2d 221, 223 (5th Cir. 1989), cert. denied, 493 U.S. 1083 (1990).

We have not yet warned Allen of the possibility of sanctions, nor is an appeal of the particular sanction imposed necessarily frivolous. However, although we show significant forbearance in imposing sanctions on pro se litigants, Allen's history in the Tyler division shows that more than a mere warning is needed to get the message across to her that she cannot continue to file frivolous lawsuits, and pursue meritless appeals, at great cost to defendants and the court. Cf. Brinkmann, 793 F.2d at 113, McAfee, 884 F.2d at 223 (warning litigants against future frivolous

lawsuits). Addititonally, her brief to this court is replete with references to the effect that the district judge and the magistrate judge ruled as they did because of racism. She does not advert to the basis of the district court's ruling or seriously challenge the sanction imposed. Accordingly, we assess double costs, on appeal, against Allen and warn her that further frivolous actions can subject her to more severe sanctions, such as payment of reasonable attorneys' fees.

D.

Allen argues that District Judge Steger and Magistrate Judge Guthrie should have recused themselves from her case because they could not be fair to her because of her race, color, and sex.

Allen filed several motions requesting all district court judges to

recuse themselves except Judge William Wayne Justice. Judge Justice promptly recused himself. Allen also filed a motion rescinding her first motion for recusal in which she stated that she believed that Judge Steger would be fair to her.

Even if her motion rescinding her motion to recuse were not enough to dispose of this issue, Allen has not alleged any facts to support her charges that the judges were unfair, biased, or prejudiced in any way. See 28 U.S.C. § 144. There is nothing in the record to suggest that Judge Steger's or Magistrate Guthrie's impartiality might reasonably be questioned. See U.S.C. § 455(a). A recusal motion is committed to the sound discretion of the district judge. United States v. Wade, 931 F.2d 300, 304 (5th Cir.), cert. denied, 112 S. Ct. 247

(1991). The district court judge and magistrate judge did not abuse their discretion in not recusing themselves.

The appeal is DISMISSED as frivolous. See Fifth Cir. Loc. R. 42.2.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 83-2059

Summary Calendar

Franklin ALLEN and Ola Mae Allen,

Plaintiffs-Appellants,

v.

Sidney W. CLYBURN, Longview Police Department, etc., et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Texas

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(September 1, 1983)

Before GEE, RANDALL and TATE, Circuit Judges.

Per Curiam:

The plaintiffs, Franklin and Ola Mae Allen, allege that the defendants conspired to prevent them from living in

the home of their choice. The district court granted summary judgment for defendants Sidney W. Clyburn and Longview Savings and Loan Association and refused to allow the plaintiffs to add the City of Longview as an additional defendant. The plaintiffs appeal, but we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND.

The Allen's original pro se complaint named only Clyburn and Longview Savings as defendants. The complaint states that the Allens constracted with Clyburn to have him build a $158,000 house for them, but that "[a]lthough said contract referred to and included plans and specifications for the construction of improvements on said property, there were, in fact, no specifications ever agreed to by Plaintiffs and between Plaintiffs and Defendants named herein." Clyburn allegedly built the house not to

the Allens' specifications but to his own, allegedly because the Allens are black and he is white. The complaint also states that Clyburn told the Allens that every item they asked for would cost extra.

The Allens had applied to Longview Savings for financing. According to the complaint, Longview Savings, acting in concert with Clyburn, denied them a loan because they were black. Further, although the Allens had complained to Longview Savings about their problems with Clyburn, it never took any action to protect them.

The complaint further alleges that Clyburn conspired with "every Law Enforcement Agency in . . . Longview . . . execpt the Texas Rangers" to discriminate against the Allens, who were arrested seven times because of their

color. The Allens also claim that they cannot obtain legal counsel because of their race, although four paragraphs later the complaint refers to an attorney retained by the Allens. The complaint seeks damages; the only reference to the law under which relief is sought is a reservation of "the right to plead further under The Civil Rights Act of 1866, . . ., The Fourteenth Amendment . . ., The Civil Rights Act of 1968 -- Title 8 -- Fair Housing and The City Ordinance of Longview, Texas #1286 . . . ."

Longview Savings and Clyburn moved to dismiss the complaint for failure to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b) (6). An affidavit from the president of Longview Savings was attached to both motions. The affidavit stated that the complaint was totally in error: Longview Savings

had not denied the Allens a loan, but on the contrary had approved a one-year commitment to make the loan. The Allens simply never came in to complete the deal, although Longview Savings sent them a reminder when the commitment was about to expire. The affidavit averred that Longview Savings remained willing to lend the Allens money at current market rates.

The Allens filed a variety of responses to the motions to dismiss. The responses essentially reiterated the claims of the complaint; the Allens filed no affidavits.

Ola Mae Allen did, however, file an "Amended Petition," evidently intended to supplement rather than to replace the original complaint. The amended complaint named only the City of Longview as a defendant and only Ms. Allen as a plaintiff. In the complaint, she claimed

that the Longview Police Department had conspired with Clyburn to harass and intimidate her because of her color. The most specific factural allegation was that the police had "intimidated, interfered with me by threat and force arresting and fining me for Sidney W. Clyburn . . . ."

The district court ordered that the motions to dismiss be considered as motions for summary judgment, and allowed ten days for the filing of affidavits, responses, and briefs. The Allens filed no affidavits, but instead submitted letters written to them by the Department of Housing and Urban Development. The letters acknowledged that the Allens had filed housing discrimination complaints with HUD and offered assistance through informal negotiations to work out the problems. The Allens also submitted a

notice of lis pendens from a state-court suit Clyburn had filed against them over the house. The district court granted the summary judgment motions and "dismiss[ed] with prejudice the petition of plaintiffs."

Meanwhile, the City of Longview had filed a motion for severance on the ground that the suits against it and against Longview Savings were based on unrelated occurrences and that the plaintiffs had never made the requiste motion to add the City as a defendant. The district court declined to sever the cases, since the plaintiffs had not moved under Federal Rule of Civil Procedure 21 to add the City and there was thus no case against it that could be severed. The district court also expressly refused to add the City as a defendant.

The Allens appeal. On appeal, they

claim only under sections 804, 805, and 901 of the Civil Rights Act of 1968, 42 U.S.C. §§ 3604, 3605, 3631 (1976), and under the ordinance of the City of Longview. We will explain why the district court's judgment was correct; we will also deal specifically with the various points that the Allens raise.

II. THE POLICE DEPARTMENT.

The Allens never moved for permission to add the City as a defendant. Federal Rule of Civil Procedure 21 provides that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and upon such terms as are just." (Emphasis added). In another case in which the plaintiffs sought to amend their complaint to add a new defendant, the court said that "it is within the sound

judicial discretion of the trial court to decide, under the facts and circumstances of the case, whether or not it will permit a new party, plaintiff or defendant, to be brought into the action." Crews v. Blake, 52 F.R.D. 106, 107 (S.D. Ga. 1971). The Allens simply never asked the court to consider adding the City.

Further, even if we viewed the amended complaint as a motion to add a defendant, we would see no abuse of discretion in the district court's refusal to grant it. The only connection between the two claims was that each involved a conspiracy with Clyburn to discriminate against Ola Mae Allen. The alleged acts of discrimination were wholly unrelated; Ms. Allen never charged that the City conspired with Longview Savings. It was not necessary to try the

claims together, nor would there have been any particular economy in doing so.

The Allens do not dispute any of this analysis. Instead, they rely on the Omnibus Order for handling the case that the district court entered on November 5, 1982. The two sections of the order that the Allens cite read as follows:

> 1. Any motion to implead third parties or to join additional parties under Rules 14 or 19, F.R.CIV.P., respectively, shall be filed by the present parties to this civil action, within ten days after receipt of a copy of this order.
>
> . . . .
>
> 8. Leave is granted to plaintiffs to file amended pleadings by January 26, 1983.

The Allens filed their amended complaints on November 16, 1982, presumably within ten days of their receipt of the Omnibus Order and unquestionably before January 26, 1983.

This order, however, does not help

the Allens. They filed an amended complaint, not a motion under rule 14 or 19. Even if the complaint were treated as a motion, it was not made under rule 14 or 19, since it was a direct claim rather than a third-party claim (rule 14) and the City was not an indispensable party (rule 19). Further, section 1 of the order did not guarantee that such motions would be granted.

While the order does permit the filing of amended complaints before January 26, 1983, it clearly cannot refer to complaints that add new defendants. If it did, it would override the ten-day limit in section 1 of the order. The order also provides that discovery must be completed by January 24, 1983. If a plaintiff could freely add defendants until January 26, it would be possible to add a defendant on January 25, after the

end of the discovery period. Similarly, the order sets dates for a pretrial order and conference that are too soon after January 26 for any defendant brought in at the amendment deadline to meet. And finally, of course, if the order were inconsistent with the Federal Rules of Civil Procedure, the rules would govern. Fed. R. Civ. P. 1 ("These rules govern the procedure in the United States district courts in all suits of a civil nature . . . .").

The Allens never moved to add the City as a defendant, and the district court did not abuse its discretion in refusing to add the City. We therefore affirm the district court's order that the City not be considered a party.

III. LONGVIEW SAVINGS.

Longview Savings moved for dismissal for failure to state a claim. The court

converted the motion to one for summary judgment. Longview Savings filed an affidavit by its president that it had not denied the Allens a loan and that it had not conspired with Clyburn.

> Federal Rule of Civil Procedure 56(e) requires that [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

The only submission that the Allens even contend showed a factual issue was the correspondence from the Department of Housing and Urban Development. There is notheing in the letters that demonstrates a factual issue; the letters do not state any facts at all. The Allens appear to

believe that HUD's offer to participate in conciliation discussions indicates that HUD had found that Clyburn and Longview Savings had violated the law. The letters do not state any such finding. Further, the statute providing for conciliation states that "[n]othing said or done in the course of [conciliation attempts] may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned." 42 U.S.C. § 3610(a) (1976). This suit is an action under that subchapter. The Allens seek relief under 42 U.S.C. §§ 3604, 3605, and 3631. The letters are therefore not competent evidence.

Summary judgment is only appropriate when, viewing the facts in the light most favorable to the nonmovant, there is no

genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Because the Allens did not file an appropriate response, the facts here are those established by the affidavit of Longview Savings' president. Longview Savings did not deny the Allens a loan or conspire with Clyburn to prevent them from buying the house they wanted.

The Allens allege only one other act of discrimination by Longview Savings: its failure to prevent Clyburn from discriminating against them. The affidavit does not address this issue, so we review it as a motion to dismiss for failure to state a claim. See 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2722 at 46 (1983). Such a motion may be granted only if it appears form the face of the

complaint that the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Under this standard, the Allens' claim must fail, for the savings and loan had no legal duty to attempt to influence Clyburn. Longview Savings is thus entitled to judgment as a matter of law on all of the Allens' claims, and we accordingly affirm the district court on that point.

IV. CLYBURN.

Clyburn's motion for summary judgment was supported only by the Longview Savings affidavit. The Allens filed no response other than the HUD letters discussed above, the lis pendens notice, and various unsworn motions and responses that reiterated the allegations of the complaint. As discussed above in part III, the Longview Savings affidavit

establishes that Clyburn did not conspire with the savings and loan.

The complaints, however, also alleges discrimination by Clyburn acting alone and with various law enforcement agencies. Since he, like the Allens, has provided no affidavit or other source of facts on this issue beyond the pleadings, we once again use the standard for a motion to dismiss for failure to state a claim. See part III, supra.

It is clear from the complaint that the Allens are not entitled to relief. The only discriminatory action allegedly taken by Clyburn alone was his building the house to his own specifications. The Allens admit in their complaint that they never agreed with Clyburn on any specifications. The contract, included in the complaint, refers to specifications only in a statement that

those not described in an attachment to the contract will be at extra cost. There is no attachment setting forth any included specifications. Under these circumstances, it was not wrongful, let alone a violation of federal law, for Clyburn to refuse to follow the Allens' requests. He simply had no duty to do otherwise.

In reviewing the allegation that Clyburn conspired with the police, we look only to the original complaint. The amended complaint contained more specific allegations, but it only named the City as a defendant. Since the amended complaint did not name Clyburn as a defendant, it did not purport to allege any additional facts against him, and we decline to construe it as having done so.

The entire allegation in the original complaint is that "Defendant --

Sidney W. Clyburn furthered 'Racial Discrimination' upon and against Plaintiffs with every Law Enforcement Agency in the City of Longview, County of Gregg; except the Texas Rangers. Plaintiffs were arrested seven times because of our Race and Color." We read pro se complaints liberally. Barksdale v. King, 699 F.2d 744, 746 (5th Cir. 1983). So viewed, this portion of the complaint alleges a conspiracy to arrest and repeated arrests of the Allens because they were black. This may state a cause of action, but not under the housing discrimination laws relied on by the plaintiffs. Section 901, 42 U.S.C. § 3631, is a criminal statute, not one providing a private civil action. Section 805, 42 U.S.C. § 3605, relates solely to discrimination in the financing of housing; the allegation of police

harassment does not mention financing.

The Allens arguably might have stated a claim under section 804, 42 U.S.C. § 3604, if they had alleged that the purpose of the arrests had been to prevent them from purchasing the house. Our liberal attitude toward pro se complaints, however, does not permit us to supply facts not pleaded by the plaintiffs, and the complaint is simply devoid of amy statement that the alleged conspiracy with the police was in any way related to the sale of the house. The Allens thus also failed to state a claim under section 804.

We thus find that the Allens have stated no federal claim against Clyburn. This leaves the question whether the Allens have stated a claim under the Longview ordinance. The district court decided the question on the merits; its

decision to do so has not been challenged, and was in any event within its discretion given the similarities in the laws and the identity of the facts. See 13 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3567 (1975).

As discussed above in relation to federal law, Clyburn's individual actions were not wrongful. There is nothing in the ordinance to change that result. He still had no duty to accommodate the Allens' choice of specifications.

This leaves the allegation of conspiracy with the police. Section 3 of the ordinance is an almost word-for-word reproduction of section 805 of the federal law, and like it deals only with discrimination in the financing of housing. Section 2 of the ordinance is a similar reproduction of section 804 of

the federal law, so the Allens' failure to allege that the conspiracy related to the sale of the house is fatal. That failure also precludes statement of a cause of action under section 9 of the ordinance, which makes it unlawful to harass any person for exercising his rights under the ordinance. The district court thus properly dismissed the claims under the ordinance, as well.

V. CONCLUSION.

We conclude that the Allens never moved to add the City of Longview as a defendant, and that the district court did not abuse its discretion in denying joinder. Further, the Allens made no factual response to the Longview Savings affidavit, and the affidavit was enough to entitle the savings and loan to summary judgment on all claims. The conspiracy claim against Clyburn was

disposed of by the Longview Savings affidavit. Finally, the complaint stated no claim, under either the federal housing laws or the Longview ordinance, against Clyburn for his individual actions or for his alleged conspiracy with the police. We therefore AFFIRM the judgment of the district court.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-4668

OLA ALLEN,

Plaintiff-Appellant,

versus

CITY OF LONGIVEW,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Texas

(Dec. 30, 1991)

Before POLITZ, KING and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellee ( ) to dismiss the appeal is

granted.

MEMORANDUM U.S. Department of Housing and Urban Development

TO: Leonard Chaires, Director, Office of Regional Fair Housing and Equal Opportunity, 6E

DATE: July 29, 1982

IN REPLY REFER TO:

FROM: Fernando Reyes, 6ES

SUBJECT: Final Investigation Report - Case File No. 06-82-06-456-200 Ola Mae Allen vs. Sidney Clyburn - Longview, Texas

A. Issue:

Whether or not the complainants' (Ms. Ola Mae Allen and Mr. Franklin Allen) were discriminated against in their attempt to construct and purchase a single family dwelling because of their color (Black) in violation of the Civil Rights Act of 1968 Title VIII Section 804(a)(b)(c)(d), financing and other.

B. Background:

The City of Longview, Texas, in which the alleged discriminatory act occurred, is located in the County of Gregg in northeast Texas and is considered the populous triangle of Shreveport, Dallas and Houston. The city itself encompasses 35 square miles while the county encompasses a total of 282 square miles.

The total population of Gregg County consists of 101,498 (1982 est.) of which 67,000 people (1982 est.) are situated in Longview, Texas. A breakdown by racial group indicates that at present there are 79,806 White, 17,807 Blacks, 2,011 Hispanics and 1874 Other.

A review of housing information taken from the City Chamber of Commerce indicates that a house of good construction, brick veneer, concrete slab

floors, and copper plumbing may be built for an average of $55 per square foot plus the lot. There are home sites with acreage available within 5 miles of town. Convenient and modern apartments, duplexes, condominiums and patio homes are scattered through the city.

There appears to be no Federal funds involved in the building of this house. According to the respondent, there are no Federal funds involved in any of the homes he builts since he is considered to be a custom home builder.

It should be noted that this case was reopened under Case File Number 06-82-06-456-200. A prior investigation conducted by Mr. William Maddox, an investigator within the office of Fair Housing and Equal Opportunity was conducted under Case File Number 06-82-12-127-200 and a determination of not to

resolve was made. The case was reopened based on a recommendation of Mr. Angeles Ramos, Title VIII Branch Chief, because the complainant introduced additional information which may have been overlooked during the first investigation. The case was thus reopened under Section 810(b) which provides that "Complaints may be reasonably and fairly amended at anytime".

Interview with Complainant:

The complainants (Ms. Ola Mae Allen and Mr. Franklin Allen) were interviewed on June 15, 1982 at their residence, 1500 West Fairmont, Apartment #13, Cluster Apartments, located in Longview, Texas. A lengthy interview, which lasted for approximately 9 hours was conducted. Present during the interview were Mr. Angeles Ramos and Mr. Fernando Reyes,

representing the United States Department of Housing and Urban Development Office - Fair Housing and Equal Opportunity Division. The interview began at approximately 11:00 a.m. where upon the complainants rights under the Title VIII Laws were discussed and also the reason for reopening the case. It was explained to the complainant that because she had introduced additional information the department had decided to reopen the case in order to review the case more throughtly. Also requested from the complainant was a new verified complaint and an affidavit with any additional information they had. This was submitted on June 15, 1982 (Tab D).

The complainant began by stating that on October 1979 she made her initial contact with the respondent, Mr. Sidney Clyburn (builder, Heritage Homes Inc.).

She stated she went to talk to the respondent because Mr. Cariker, an employee of Longview Savings and Loan had recommended the respondent to them.

She stated that she called the respondent and told him that Mr. Cariker had referred her to him and that she was interested in building a house and an appointment was thus set.

The first meeting, according to the complainant, was held at the respondents' house located on Hampshire Street in Longview, Texas. The complainant stated that she provided the respondent builder with blueprints of the house she wanted to build, since she had the prints drawn up at Moore Lumber Company prior to this first meeting. But, the complainant states that she never gave the respondent any specifications for the house nor were any specfications for the house ever

agreed upon. She did state that they did talk about what would go in the house but that it was merely talk since nothing was presented by the respondent in writing.

The complainant continued by stating that they had approximately three meetings and that it was around the third meeting in which the contract was signed, the date of this meeting was in November 28, 1979. The complainants stated that the respondent agreed to build for them a house at 1415 Lazy Lane in Longview, Texas to their desires and specifications. The complainant stated she later gave a $15,800.00 deposit to the respondent to build said dwelling.

The complainant states that construction of the house began around February 1980. Prior to the start of construction, however, the complainant stated she went to Longview Savings and

Loan to obtain a commitment letter for a permanent mortgage loan which was approved on the first of February 1980. The complainant states that around March of 1980 the concrete slab was started and work continued until the summer of 1980 and for some reason unknown to the complainant work was halted. She also alleged that after the signing of the contract she attempted to meet with the respondent to discuss the specifications but that she was never able to meet with him.

The complainant thus alleges that it was in September of 1980 that she began to realize that problems were going to arise out of this contract because each time she requested a particular item she was told that she would be charged extra for that item. According to the complainant, it was also around this time

that she noticed that other houses that the respondent was building for white owners, which started about the same time as hers, were nearing completion but that hers was not nearly completed.

In October of 1980, the complainant states that he began to try to intimidate her in not buying the house by first making some noticeable changes to the house without her consent. She stated that he painted the brick of the house even though the house called for non-painted brick. She stated that around this time she began receiving abusive phone calls and that someone was damaging her trucks.

The complainant stated that it was also in September that she found out that the respondent had submitted specifications to the Longview Savings and Loan without her consent or

agreement. She also alleged that changes were made to the house that were not on her blueprints. After realizing all these problems, she stated she contacted Longview Saving and Loan and told them of the problems she was having. She states she talked to Mr. Willis Clark who was the official handling the interium financing for the respondent. She states that Mr. Clark told her that he would discuss the problem with the respondent and get back to her. She states that Mr. Clark has to this date never returned her call.

The complainant states that the Saving and Loan did not help her in any way to try to solve the problem she was having with the respondent. The complainant also stated that she in no way delayed the respondent from building this house. The complainant submitted

receipts for items she had ordered which were to go into the house (Tab H). The complainant also provided receipts for the blueprints from Moore Lumber Company who drew up the blueprints (Tab H).

The complainant states that she was treated differently than a White because of her color, Black. The complainant's allegations are thus based on: (1) the amount of time it took to build her house as opposed to other units going up at approximately the same time as her's; (2) She alleges that the respondent purposely made changes to the house to discourage her from following through with the contract; (3) That he treated her differently by not meeting with her to discuss the specifications of the house; (4) That he intimidated her by painting the brick she had picked out without her consent thus hoping to discourage her

from purchasing the unit; (5) By harrassing her through the use of the Longview Police Department who on several occasions picked her up and arrested her based on information provided by the respondent; and (6) By using abusive and threatening phone calls and damaging of personal property.

The complainant thus concluded that she received a bill for $5,218.69 for the extras she says were included in her specifications that should have already been included. She states she had her attorney file a letter refusing to pay these extras plus the filing of a suit in court. The complainant ended by saying that she has never gone to court to decide who breached the contract.

Soon after January 14, 1980, the dirt work was begun, followed by the framing which was started the middle of

March. Several changes were requested by the complainant which were done at no cost to them. Also, the respondent stated that he was held up because the complainant refused to select tub colors. He also stated that she, on several occasions, insisted on being present during the performance of various jobs at the house all of which took time to do. The disagreements as to what would go in the house started when she told him that she wanted wood ceilings and that he told her that her plans did not call for that and there would be an extra charge for that job.

A meeting was set up on August 19, 1980, in which he told the complainants that he had bid the house by the specs that they brought and that he had shown them a house that was comparable to theirs and thus any extras would be at an

additional charge. He then stated he offered them their money back and let them out of the contract. He states that they did not want out of the contract but rather to figure how much the extra wood ceilings would cost. He then states he gave them a cost per room for material and labor. He states they offered the money in advance but that he told them that any extra put on would be paid after the work had been completed. They then were to call back their decision, which they did. They decided to add wood ceilings to the master bedroom, den, and living room and moldings to the other three bedrooms. It was agreed that the price of the ceilings was to be paid upon installation along with the other accumulated extras.

The respondent went on to say that after the arguing of the kitchen

cabinets, bathroom and ceilings at a cost of $1,800.00 he received a letter from Ms. Allen's attorney, stating that she would no longer pay for any extras and requested her money back plus attorney fees. He stated that at this point he had no choice but to file a breach contract suit against the complainant. He then proceeded to try to complete the house and put it on the market for sale to try to limit his damages from the breach of contract. During the last week of October he stated he had the painter paint the brick to try to make it a more saleable house.

The respondent continued by saying that the complainant harassed the workers by cursing them and ordering them off the property. He stated he sought police help. He states he was told by the police that before they could do anything

he or his wife, as owners of the property, had to catch the complainant on the property and order her off and to stay off. He states that the complainant on one occasion stopped in front of the house in question after recognizing his wife's car and told her to open the front door but that his wife was scared and only ordered her off the property; otherwise, she would have the police pick her up. He states that the complainant then called his wife "trash" and left after realizing that his wife would not open the door. The respondent stated that this incident was witnessed by several of his workers.

He also stated that the complainants returned later that evening, at which time he had the police arrest them for trespassing.

At the time of the trial, the

respondent stated the complainant did not show up, the trial was thus dismissed and the court said they had forfeited their bond. Later, according to the respondent, they received a call from the court saying that a retrial would be held since the complainant had shown up two hours late - to which they had said that their attorney had given them the wrong time. On the retrial, the respondent states that his wife was unable to be there because their son was sick thus the judge dismissed the charges (this according to the respondent) appears to have set the complainant "on fire." The next incident involved stealing of his signs. He stated that the complainant stole several Heritage Home signs from the property and he had the police arrest them for this.

He ended by stating that the

complainants harassed them and that the complainant from the start had never intented to pay for the house.

Witnesses for the Complainant:

Numerous witnesses were interviewed, and below is a summary of statements made by those witnesses:

Mr. Al Miller was interviewed on June 29, 1982, and submitted a statement on June 11, 1982 which was verified on June 29, 1982.

Mr. Al Miller stated that he has known the complainants for approximately five years. During the months of June and July 1980 he went with them to view the construction of their new home. He stated that during these visits he noticed many things that were wrong with the house. He states that he is by no means a builder but that the defects were obvious to any person. He also stated

Supreme Court, U.S.
FILED
APR 22 1992
OFFICE OF THE CLERK

(3)

91-2023

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

OLA ALLEN, PH.D., PETITIONER

VS.

E. C. SHRUM, ETAL, RESPONDENTS

PETITION FOR WRIT OF

CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

APPENDIX 2

OLA ALLEN, Ph.D.
PRO SE
P. O. BOX 6706
LONGVIEW, TX 75608

5(

that he drove around without a state license in another city for approximately two years and was never stopped. He felt that the complainant had been harassed because of this (Tab E-1).

Mr. Jerry Crockroft, of Moore Lumber Company, was interviewed on June 16, 1982 and a statement taken. Mr. Crockroft stated that he had drawn up the specifications for the Allens (complainants) but that it was only intended to be used by Moore Lumber Company. He stated that the specifications were written up because Moore Lumber had wanted to build the house for the Allens. However, he stated that the complainant chose Heritage Homes to build the house. See statement for "Normal procedure on building a custom home by Moore Lumber Company." (Tab E-2)

Ms. Julie Hale Fowler, past employee

of Moore Lumber Company, was interviewed on June 16, 1982 and a verified statement was taken. Ms. Fowler stated that Moore Lumber drew up plans for the Allens and that during this process Mr. Crockroft and herself sat down to discuss the specifications of the house they wanted to build. She stated these specifications were primarily a sales tool and were not binding upon anyone at that time. She stated that had the Allens decided to build with Moore Lumber, the final plans and specifications would have been initialed and signed by both parties. She also stated that in her opinion when the Allens first came to Moore Lumber, she felt that they would encounter problems in finding a builder to build them a house in the area they wanted because of the racism in the town of Longview.

According to Mrs. Fowler, the specfications drawn up by Mr. Crockroft would have been of no use to another builder except possibly as a guide to develop new plans.

Separate interviews with four Longview Police Officers were conducted at the Longview Police Department. Also present during these interviews was the City Attorney, Mr. Roberts Jr. The City Attorney requested the officer not give a sworn statement. The first police officer interviewed was Patrol Lieutenant Leroy Hamilton. Officer Hamilton stated that he first encountered Mr. and Mrs. Allen when he was called to go to the property in question. He stated that upon arrival, the builder introduced himself and told him he was having problems with a lady who was stopping this workers from performing their jobs.

He described the lady as a Black female with a white Cadillac with California license plates and gave an address where he could find the complainants. He stated he made a concerned effort to find her to let her know that she should pursue this in court. He stated he stopped the Allens later and arrested them for invalid drivers license and out of state license plates. He did acknowledge that the information given about the out of town plates was provided by the builder. He also stated he had no choice but to stop the Allens once he was aware that they were in violation of the law. He ended by saying that he did not know the builder prior to the first call.

Officer Durwood Smith was interviewed and he stated he did not know the builder prior to the first incident. He stated he was responding to a call

that someone was trespassing on a site being built and stated he had no choice but to arrest them, since he had a warrant for their arrest. He stated she did not refuse arrest.

Officer Willis Mulfus Jr. was interviewed and he stated he never arrested the Allens, that his involvement was a backup to Durwood Smith. He stated he did not know the builder prior to this incident. He stated that when he was there they ordered the Allens to leave the property. He also stated that during his presence, the Allens were not causing any disturbance as far as he can remember.

Officer David Applewhite stated he stopped the Allens on a minor traffic violation and gave them a warning. He stated he did not remember arresting them but did tell them they needed to change

license plates and drivers license.

Mr. Crossely was interviewed at his residence on June 24, 1982. Mr. Crossely is the person who lives next door to the house in question. Mr. Crossely is also the only Black to reside at the Wildwood Addition. Mr. Crossely stated that he had talked to both the Allens and the Clyburns. He stated he only knew what he had been told about the problem from both parties. He stated he was aware that a problem existed concerning the specifications of the house. He did make one statement, however, which indicates that color may have had a bearing on the case. He stated that Clyburns son had told his son that he was not allowed to go to the "nigger house." Mr. Crossely stated he was upset by this, but, that he never approached the Clyburns concerning this statement. He did state that he

felt that a six or seven year old child could only have heard this at home.

An interview with Ms. Marie Gibson was conducted. Ms. Gibson is the owner of Al Don Marble Company. Ms. Gibson stated that Ms. Allen came by her place several different times to select a tub and toilet color but that she could never make a decision. She felt that this may have caused Mr. Clyburn a delay in completing the house.

Research and Evidence:

A review of the builer's records were so poor that a good comparative analysis was impossible. However, four of the files looked at showed that in each case, the accounts were handled differently. Since each case is handled individually, it would appear that it is the builder's discretion to resolve any disputes with the client. It appears

that the same amount of discretion was not done with this complainant. It also appears that the builder may have decided that it was easier to give the complainants' their money back rather than to complete the project. Also, during the interview with the respondents, it was stated by his wife that she did not want her husband to build the house for the Allens. The respondent stated that his wife was a good judge of character of persons and that she had a feeling that building this house for the complainants was going to be a problem. It should be noted that since feelings from the beginning were adverse that any problem that arose during the construction may have compounded the problem and thus normal handling of a similar situation with another customer may have been treated

entirely different.

A review of the records of the Longview Savings and Loan also indicates that at no time did the respondent submit any charges to the Savings and Loan, either in writing or verbally, even though contractually this is a requirement of paragraph 12 of the contract with the builder and of the Savings and Loan. The review further shows that the respondent did not use his own specifications but, instead decided to use the forms that were drawn up by a completely different builder. This may indicate that the builder was not concerned with completing the project for the complainants. Furthermore, of those files reviewed it was noticed that the respondent did not use specifications drawn up by someone else.

Further, it was noted that during

various construction phases changes were made to alter the plans of the house without any notification or written agreement by the various parties involved. This appears to indicate that the builder may have decided to build the house on the basis of what he thought the house should look like rather than what the complainant wanted. For instance in observing the front view of the house it was noticed changes have completely changed the appearance of the house. Finally, it appears that after the initial dispute the builder took it upon himself to change the house by painting the brick. This appears to be an obvious move to discourage and intimate the complainant from purchasing the dwelling. It, therefore, appears that the respondent willfully decided not to sell the house to the complainant even though

no court hearing had been held to decide who had breached the contract. Based on the actions by the respondent and the fact that he has built numerous houses in the City of Longview without taking any actions of this sort, indicates that color may have been a factor in the way he acted.

It also appears that the respondent tried to intimate the complainant by using the Longview Police Department without the Police Department's knowledge. The fact that the property was in dispute with both parties having an interest in the property did not justify the respondent in having the complainant arrested for out of state license plates. During the interview with the Police Department they acknowledged that during the time they arrested the complainant she appeared not

to be causing any problems. The witnesses used by the respondent were employees of the respondent thus their statement could be questionalbe. Since the respondent willfully gave the police information which caused the complainant to be arrested approximately four times indicates that the respondent was trying to intimidate the complainant more so than attempting to resolve his problem, since, he had no reason to give out information concerning the complainant's personnel life that he would not have been privileged to had he not been the builder.

Recommendation:

Based on the information above, it appears that discrimination may have occurred. It is, therefore, recommended that the Assistant Secretary attempt to resolve this complaint.

Fernando Reyes DATE: 7/27/82
Fernando Reyes
Equal Opportunity Specialist

Concurred By:

Angeles Ramos DATE: 7/30/82
Angeles Ramos
Branch Chief
Title VIII

John E. Eubanks DATE: 7/30/82
John E. Eubanks
Director
Fair Housing and Equal Opportunity
Compliance Division

Leonard Chaires DATE: 7/30/82
Leonard Chaires
Director, Office of Regional
Fair Housing and Equal Opportunity

Case File No.: 06-82-06-456-200

MEMORANDUM U.S. Department of Housing and Urban Development

TO: Leonard Chaires, Director, Office of Regional Fair Housing and Equal Opportunity, 6E

DATE: August 16, 1982

IN REPLY REFER TO:

FROM: Fernando Reyes, 6ES

SUBJECT: Final Investigation Report - Case File No. 06-82-02-247-200

A. Issue:

Whether or not the complainant, Ms. Ola Mae Allen, was discriminated against in her financing and dealings with the Longview Savings and Loan in violation of Section 805 of the Civil Rights Act of 1968?

B. Background:

Longview Savings and Loan Association is located on Green Street in Longview, Texas. The Savings and Loan is

a member of the Federal Savings and Loan Insurance Corporation. It is Federally chartered to do business in the State of Texas. The Savings and Loan appears to handle Federal Mortgage Insured Programs since they presently loan money for HUD home mortages and Veterans Home Mortages. It does not, however, appear that any Federal funds were directly involved in the complainants custom home loan commitment or in the builder's interim loan.

Interview with Complainant:

Ms. Ola Mae Allen was personally interviewed by Fernando Reyes and Mr. Angeles Ramos on June 19, 1982 at her residence. An initial interview was also conducted by Mr. William Maddox, investigator for this office on April 20, 1982.

The complainant stated during the

interview that she had applied for a loan commitment from Longview Savings and Loan to build a custom single family dwelling through Mr. Sid Clyburn of DBA Heritage Homes. The complainant further alleges that she received her loan commitment on the first of February 1980 for $93,750.00 at 14.25% interest rate for a 30-year term.

The complainant states that Longview Savings and Loan discriminated against her in her attempt to finance said dwelling. She states that the Savings and Loan allowed the builder to complete the said dwelling by financing him even though she had notified the Savings and Loan that she was having problems with the construction of the dwelling. She further stated that the Savings and Loan discriminated against her by not extending her loan commitment while at

the same time they continued to finance the builder. She also alleges that the reason the Savings and Loan refused to act against the builder or assist her in resolving the problem was based on her color (Black), and sex (female). She alleges that had she been White and male, the Savings and Loan would have acted differently and assisted her in resolving the problem.

In addition the complainant alleges that the Savings and Loan did not follow normal procedures as required by her contract with them in building custom homes. She states that the Savings and Loan did not require specifications or written changes by the builder and thus allowed the builder to build the house at his own desires and not hers.

Interview with Respondent:

Mr. Willis Clark, former Vice-

President in charge of construction loans for Longview Savings and Loan, was interviewed on February 18, 1982. He advised he joined Longview Savings and Loan on July 10, 1980, during the period a construction loan was in progress at 1415 Lazy Lane, Longview, Texas. He stated the property under construction was being built by Sid Clyburn (DBA Heritage Homes). Mr. Clark advised that during construction, a construction inspector made inspections weekly to determine work progress and funds were dispersed likewise. Mr. Clark indicated Ms. Allen came to his office stating she was having problems with the extras she had contracted for. He advised her that these problems were between the builder and buyer and Longview Savings and Loan was only the construction lender. He further stated he could ask Mr. Clyburn

to visit with her in hopes they could be resolved.

Mr. Clark later learned that the Allens had made an application for a permanent loan in November of 1979 through the Mortgage Loan Department of which he was not a part of. Upon his inquiry he learned through Mrs. Jackson, of that department, that the loan had been approved.

Mr. Clark advised that he had several conversations with the complainant and each time pointed out that the differences between she and Mr. Clyburn had to be resolved by those parties. (Tab G).

Mr. Irving H. McCracken, President of Longview Savings and Loan, Longview, Texas was interviewed on April 20, 1982 and July 1, 1982 and receipt for service obtained (Tab C). Mr. McCracken provided

a statement (Tab F) in which he anwered a number of direct questions regarding his firm's dealings with Ms. Ola Mae Allen and Mr. Sidney Clyburn. Mr. McCracken advised that it is not the responsibility of the interim loan officer to act as "referee" and attempt to decide whether a buyer or a builder is correct when a conflict arises between the two parties. He indicated that the buyer and builder enter into a contractual relationship before a lending institution becomes involved in financing the purchase. He stated the association cannot and should not "choose sides" in the case of such a conflict between a buyer and builder. Mr. McCracken advised the interim loan officer is charged with the responsibility of investing funds in construction loans to builders who qualify under their construction loan

program.

Mr. McCracken was asked questions in regard to the interim financing Mr. Clyburn had received in the building of the complainant's dwelling. Mr. McCracken advised Mr. Clyburn DBA Heritage Homes had done business with Longview Savings and Loan for the past ten years and was a very respectable builder. He stated Mr. Clyburn submitted an application for $112,000 which was approved by the four directors on January 8, 1980. The appraisal, which was based upon the plans and specifications submitted to Longview Savings and Loan, was for $140,000. Mr. McCracken provided copies of the draws during construction (Tab H-1).

Mr. McCracken stated that the builder has the right to make changes during the construction phase so long as

it does not decrease the value of the property.

Additional questions were asked relative to the interest rate for permanent financing on January 8, 1980, the loan amount on that date, and the 67% figure shown on the loan (Tab H-2). Mr. McCracken advised these figures are approved by the Federal Home Loan Mortgage Corporation as guidelines. The change of $75,000 on the application to $93,750 on the approved amount was the increase from the date Ms. Allen applied (Tab H-3) on November 30, 1979 and the date the loan was approved (Tab H-2).

A clarification was made on when the commitment fee is paid. Mr. McCracken advised the fee is paid at the time the commitment is issued. The $2,812.50 Mrs. Allen paid was paid on February 1, 1980, the date she signed the permanent loan

commitment (Tab H-2).

Mr. McCracken indicated the reason the loan application was not signed was because it was just workpapers. He advised that at loan closing these applications are typed and prepared for signature by both borrowers. Mr. McCracken stated it was not the policy of his associates to require initials or signatures on plans or specifications. Mr. McCracken advised the 68% figure of the appraisal is simply calculating a ratio between the appraisal and the loan amount.

Mr. McCracken in his earlier letter of March 3, 1982 (Tab F), indicated it was not until December 10, 1980 that construction was contemplated between Mr. Clyburn and Mr. and Mrs. Allen and a request was made of her to advise them of the court action.

Research and Evidence:

A lengthy review of the complainant's file and the builder's file was conducted. Ms. Carolyn Jackson, Vice-President of the Loan Office and Mr. Harbor, attorney for Longview Savings and Loans, were present. It was interesting to note that several discrepancies were noted in what was described as the normal procedure for handling a loan commitment for a custom home.

The first discrepancy was that no one at the Savings and Loan could state who submitted the specifications in the complainant's file or why they were not signed or initialed. Nor could anyone explain why no written reports were prepared by the builder to the Savings and Loan as changes were made to the complainant's custom house. Also, no changes were reported by the Savings and

Loan inspector to the Savings and Loan even though changes were made to the house. This requirement is necessary in accordance with paragraph 12 of the contract between the buyer and the Savings and Loan (H-2).

Second, it appears that the Savings and Loan's reluctance to become involved in the dispute between the builder and the complainant assisted the builder in intimidating the complainant from purchasing the home. It would stand to reason that since all these parties had substantial amounts invested in the property, the Savings and Loan being the only neutral party should have provided some assistance to both parties in resolving the dispute since the Savings and Loan's ultimate collataral would be the house itself. Plus, it does not appear that the Savings and Loan appeared

to be concerned with the loss of a potential buyer even though the loan to the builder was based on him having a permanent buyer for the house.

Third, since both the complainant and the respondent had contracts with the Savings and Loan it appears that the complainant and the respondent had to comply with certain actions in order for the contract to be valid. It appears from the review that the complainants complied with their part of the contract with the Savings and Loan, but it does not appear that the respondent complied fully with his part of the contract with the Savings and Loan or the buyers contract.

Fourth, it was also noted that the house was built differently and that changes were made which altered the plans submitted by the complainant. There

appears to be no agreement as to acceptance of the change by the complainant since no initials on the plans were noted.

Finally noted in the files was a note on the complainant's file which was signed by the various directors of the Savings and Loan not to extend or renew the loan commitment to the complainant. The Savings and Loan did state that they would, however, give the complainants a loan at the prevailing rate. There was, however, no reference to the fact that the complainant was ever informed of this either in writing or orally. It was interesting to note that the builder was extended a new loan at a new interest rate since the house is still vacant.

C. Recommendation:

Based on the above, it is recommended that the Assistant

Secretary attempt to resolve this complaint.

Fernando Reyes DATE: 8/11/82
Fernando Reyes
Equal Opportunity Specialist

Concurred By:

_____ DATE:_____
Angeles Ramos
Branch Chief
Title VIII

_____ DATE:_____
John E. Eubanks
Director
Fair Housing and Equal Opportunity
Compliance Division

_____ DATE:_____
Leonard Chaires
Director, Office of Regional
Fair Housing and Equal Opportunity

Case File No.: 06-82-02-247-200

1-6-92

IN THE U.S. DISTRICT COURT IN THE
EASTERN DISTRICT OF TEXAS TYLER DIVISION

OLA ALLEN,PH.D.PRO SE	X	CIVIL ACTION
VS.	X	NO. 6:90-321- CA
FLEETWOOD INSURANCE	X	
ENTERPRISES AND AETNA	X	
LIFE INSURANCE,	X	
DEFENDANTS	X	

"Plaintiff 1st Amended Complaint - violations of my Civil Right, because of my, race, color and sex - so help me God."

To The Honorable Wm. Wayne Justice:

Fleetwood-Aetna Insurance induced racism, rape, slander, defamation to my character, extort, defraud, conspiracy, invasion of my privacy, medical benefits suspended on or about 3-89 to the present on hersay, surveillance, have people following me almost everywhere I go, criminal trespassing, harassments, intimidations, malpractice, medical malpractice, financial hardships, ETC. at the requests of the City Of Longview,

Harbour, Kenley, Boyland, Harris and Smith, E.C. Shrum, Connally, Super One Foods, Clark, Kathy R. Ogle, Ohrvall, Risner, D.C. and again Harbour, Kenley, Boyland, Harris and Smith - 6:91CV42 and 6:91CV151, because of my race, color and sex, beyond a shadow of a doubt - so help me God...

Fleetwood-Aetna Insurance continue to harass, ETC. me for my authorization to invade my privacy, but state that it is for my physicians of which information has been obtained under oath as a matter of Constitutional Law. What physicians?? See certifications...

Fleetwood-Aetna Insurance and each of the white racists named above, herein and the record defamed me - stating that I altered some receipts from Risner, D.C. I did not - so help me God...no one saw

me alter not a receipt at anytime - it is a bold face lie...

I request to this Court to order each Defendant, attorneys and ETAL to show strict proof thereof of each and every allegation of racism, rape, ETC. induced upon and against me, because of my race, color and sex beyond a shadow of a doubt - so help me God...Judge, each and every allegation is true and correct and I challenge each white racist Defendants and ETAL to prove me to be a lowlife liar on all issues re my Civil Rights being violated for themselves, even other, with each other, greed and personal gain at my expenses - so help me God...I have submitted the truth and nothing but the truth - so help me God, yet I am constantly and continually

denied Equal Protection and Due Process of the Law by each white racist Defendant named above, herein and the record for all intents and purposes - so help me God...

Most of the attached exhibits have been submitted previously to Fleetwood-Aetna Insurance and are not submitted at this time, 1-75...

I am suing Fleetwood-Aetna Insurance for actual and punitive damages - 75 million dollars...

"I certify that a true and correct copy has been forward to the address of record 1-6-92."

Respectfully submitted,

Ola Allen, PH.D. Pro Se

1-6-92

IN THE U.S. DISTRICT COURT IN THE
EASTERN DISTRICT OF TEXAS TYLER DIVISION

OLA ALLEN, PH.D. PRO SE	X	CIVIL ACTION
VS.	X	NO. 6:90:321-CA
FLEETWOOD INSURANCE	X	
ENTERPRISES AND AETNA	X	
LIFE INSURANCE,	X	
DEFENDANTS	X	

Honorable Wm. Wayne Justice:

"Plaintiff's 1st Motion To Amend."

Plaintiff moves this Court for leave to amend the above name Defendants to this Civil Action immediately...

"I certify that a true and correct copy has been forwarded to the address of record 1-6-92."

Respectfully submitted,

Ola Allen, PH.D. Pro Se

1-6-92

IN THE U.S. DISTRICT COURT IN THE
EASTERN DISTRICT OF TEXAS TYLER DIVISION

OLA ALLEN, PH.D. PRO SE,	X	CIVIL ACTION
PLAINTIFF	X	NO. 6:91CV42
VS.	X	
CITY OF LONGVIEW, ETAL,	X	
DEFENDANTS	X	

"Plaintiff's 1st Motion For Reconsideration of This Court's Order of Recusal."

To The Honorable Wm. Wayne Justice:

This Civil Action is originally Judge Justice and Constitutional Law dictates this Civil Action return to Judge Justice...

Plaintiff moves this Court to reconsider its previous Order of Recusal in the interests of Justice and Constitutional Law...Judge, I am human, I have feelings and I do hurt. I have the same inherited rights from God and U.S. Constitution as each white racist

Defendant and ETAL have and no one is going to take my Civil Rights away from me...

I have and is a victim of exploited racism, rape, ETC. from on or about 1979 to the present, because I have color in my skin, ETC..., but my monies are white...

I am standing firmly on the word of God and U.S. Constitution - toe to toe with each white racist Defendants and ETAL, 24 hours a day - so help me God...

This Court should recind its previous order of Recusal in the interests of Justice, ETC. stated above, herein and the record...

"I certify that a true and correct copy has been forwarded to the address of record 2-18-92."

Respectfully submitted,

1-6-92

Ola Allen, PH.D. Pro Se

Ola Allen, PH.D.
P.O. Box 6706
Longview, TX 7608
4-21-92

Murray L. Harris, Clerk
U.S. District Court
Tyler Division
211 West Ferguson St.
Rm. 106
Tyler, Texas 75702

Subject: 6:90-321-CA-91-4668 and 6:91CV42-91-4591 Originally Judge Justice

Dear Mr. Harris:

In the above named Civil Actions I filed Motions To Re-Open Newly Discovered Evidence addressed to Judge Justice...These motion were mailed 1-6-92 and 2-18-92...

These motions were not submitted to Judge Justice...Judge Justice should have been allowed to make his decisions; instead Mike Lantz submitted to Judge Steger which is obstruction of justice, fraud, racism, rape, ETC. and denying me

Equal Protection and Due Process of the Law...Mike Lantz, Defendants, attorneys, Judge Steger and ETAL have violated my Civil Rights from 1979 to the Present...

Please do not permit your employee to conspire to induce racism, rape, ETC. upon and against me again or I will file a lawsuit in the U.S. Supreme Court...

It is obvious that Judge Justice had jurisdiction, had be not; he would have stated that...Please do not discuss me with anyone at anytime without my permission...

Please do not single me out again...I pay my way and I have done no wrong to anyone at anytime...Leave me alone and stay out of my personal business..Please send my documents to the party whom they are addressed as a Matter of Constitutional Law and let that party make his decision...Your employee - Mike

Lantz is wrong - he should have sent my documents to Judge Justice; instead of conspiring with Judge Steger, Defendants, attorneys and ETAL to stop me anyway they can at any cost...

Sincerely,

Ola Allen, PH.D.

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

EASTERN DISTRICT OF TEXAS

May 7, 1992

Ola Allen, Ph.D.
P.O. Box 6706
Longview, Texas 75608

Dear Dr. Allen:

I have received your letter concerning your motions to reopen your cases, and your objections to the actions by the Clerk's staff.

Specifically, you objected to the action of our civil docket clerk, Mike Lantz, of forwarding your motions to Judge Steger, rather than Judge Justice as you requested. I assure you this was done as a matter of standard office procedure, and not a conspiracy against you because of your race, sex, color, etc.

We operate under set published rules

known as Federal Civil Judicial Procedure and Rules. We also operate under Local Court Rules which are set and agreed to by all the federal judges in this district, and which are published for public and interoffice information. The civil actions which you filed in this court were assigned to a judge by random draw. (One of your cases was assigned to Judge Justice, in which he disqualified himself. This case was then assigned to Judge Steger according to our Local Rule #18, "Reassignment of Actions after Recusal or Disqualification.") Once a civil action has been assigned to a particular judge, it remains with that judge until the case is disposed of, or unless he recuses or disqualifies himself in that case.

Despite the fact that you would prefer Judge Justice to preside in your

civil cases, the Clerk's office is not permitted by Rules to forward pleadings in a case to a judge who is not assigned to that case, unless directed to do so by the presiding judge. It is also improper to assign a case to a particular judge at the request of a litigant; case assignment must be made on a random and impartial basis. Therefore, to forward your pleadings to Judge Justice, even though he is not the presiding judge in your case, is a violation of civil rules and established office procedure.

Finally, I would like to assure you that the Clerk's staff are required to be impartial and unbiased, and are not permitted to conspire in any way to inhibit justice for any litigants, regardless of their sex, race, religion or national origin. Mr. Lantz is an excellent employee and performs his

office responsibilities competently and conscientiously. He has distinguished himself both in his ability as a civil docket clerk and in his consideration of others, both in the office and with the public.

After discussing your complaint with Mr. Lantz and carefully reviewing the information available, I find no fault or impropriety in Mr. Lantz's actions, and believe them to be correct.

If I may be of further assistance to you, please feel free to contact this office.

Sincerely yours,

Murray L. Harris, Clerk

cc: Judge William M. Steger
Judge William W. Justice

Ola Allen, PH.D.
P.O. Box 6706
Longview, Texas 75608

Murray L. Harris, Clerk
U.S. District Court
211 West Ferguson St.
Rm. 106
Tyler, Texas 75702

Dear Mr. Harris:

Thank you for your letter of 5-7-92, I received it 5-9-92...

My letter to you dated 4-21-92 re "Motions To Re Open - Newly Discovered Evidence and Motions For Reconsideration of previous orders of Recusal"...All of the above named motions should have been forwarded to Judge Justice; instead of Judge Steger as a Matter of Constitutional Law; not according to Standard Office Procedures, as it is my rights to Motion for Reconsideration of previous orders of Judge Justice to him and not Judge Steger...Judge Justice

recused himself in 6:90-321-CA and 6:91CV42; not Judge Steger...All of my Civil Rights complaints are originally Judge Justice; except 6:91CV151...

You are stating in your letter of 5-7-92 that I do not have a right to motion to Judge Justice for reconsideration why? The U.S. Constitution gives me that right...One can motion at anytime to any judge for reconsideration and it should go to that judge only...

I do prefer Judge Justice, as he upholds the U.S. Constitution...Judge Justice has not attempted to take my Civil Rights from me...Judge Justice is preferred by most Americans; except white racists...It is my Constitutional Right to my choice - Article I...

Judges in the District Court have agreed on ruling on Motions for Reconsideration, ETC. addressed to them

by another District Court judge? That is Unconstitutional...

I did not request to the Clerk's office to give me Judge Justice...Judge Justice name was drawn; except as previously stated above, herein and the records...

How can you legally, justly and fairly justify according to the U.S. Constitution re Mike Lantz re all of my Motions...Mike Lantz knew that Judge Steger refused to recuse himself according to 28 U.S.C. #144 and #455 at my requests...

From 1979 to the present I am a victim of racism, rape, ETC. and various judges have assisted these white racists in their racism imposed upon and against me, because of my race, color, sex, PH.D., Pro Se, submit the truth and nothing but the truth and I am right so

help me God; therefore to stop me at any cost is their ultimate goal...

In the past in 6:82-49-CA Hud found that I am a victim of racism, rape, ETC. and Judge Thomas Reavely dismissed my housing discrimination complaint...Judge Reavely stated that Hud did not say that I had been abused: but Hud did state that I am a victim of racism, rape, ETC. the only judge that stated and knew what Hud findings are is Judge Justice...That is wrong and unconstitutional...

In Simi Valley, CA re the Rodney King's trial...Injustice of racism rendered from the jury upon and against him and upon and against me from the bench from various judges, which is Unconstitutional...None of us have the right to impose injustice upon and against anyone for any reason at anytime...

Mr. Harris, put yourself in my position for a moment how would you feel and what would you do??

The 5th Circuit affirmed Judge Reavley's prejudice and bias orders and I file my Motion To Re-Open Newly Discovered Evidence and it went to the original judge assigned to my case 6:82-49-CA; not to Judge Reavley...

I wrote a Polite professional Godly letter to you and you answered; not Mike Lantz...There is no difference...Judge Steger had no jurisdiction to rule on motions addressed to Judge Justice...

The U.S. Supreme Court has in its Local Court rules that various justices can be requested to review Petition for A Writ of Certiorari, ETC. by anyone; but it is a problem when I make that request in the U.S. District Court and Clerk's Offices...Attorney request various judges

why can't I???

I have the same Civil Rights that I inherited through God, U.S. Constitution and my deceased parents; just as all white racists and ETAL do...

Should I be wrong and you are right and vice versa we owe each other an apology and forgiveness...

I am a victim of racism, rape, ETC. and various judges departed from the accepted and usual course of Judicial Proceedings and calls for an exercise of the U.S. Supreme Court Supervision re my Civil Rights...

I am not filing a law suit in the U.S. Supreme Court at this time upon and against you, as your letter does stipulate the intent is not maliciously rendered upon and against me from the Clerk's office, because of my race, ETC...

Should you need my assistance for anything, please do not hesitate to let me know...

I am human and I do hurt, just as you, Mike Lantz and ETAL hurt...

We all need to live according to God's words and love one another as he loves us...we as a people do not do that and it causes injustice of Whatsoever Nature...

Jurisdiction of a judge is not within your jurisdiction re the constitutionality re my Civil Rights and as it presently stands I do not have any Civil Rights, previously stated above, herein and the records...

Sincerely,

Ola Allen, PH.D.

cc: Judge Justice

Judge Steger